

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>HILARIO RAZURA JIMENEZ, JOSE</b>	)	
<b>MANUEL GUERRERO GOMEZ,</b>	)	
<b>J. REFUGIO CASTELLON LUNA,</b>	)	
<b>GUILLERMO BERNAL ORTEGA,</b>	)	
<b>RIGOBERTO TORRES GUERRERO,</b>	)	
<b>DIEGO FLORES CICERNOS,</b>	)	<b>Civil Action No. 3:11-0276</b>
<b>RUBEN MADERA CANALES, LUIS A.</b>	)	
<b>ALBERTO MEDINA AYON, ALVARO</b>	)	
<b>MORALES VILLEGAS, MELCHOR</b>	)	
<b>JAVIER CASTANEDA GALLARDO,</b>	)	
<b>JOSE CASIMIRO BENAVIDES</b>	)	
<b>FRIAS, EDGARDO IBARRA RUIZ,</b>	)	<b>ANSWER TO FIRST</b>
<b>HUGO IGNACIO IBARRA RUIZ,</b>	)	<b>AMENDED COMPLAINT</b>
<b>MIGUEL ANGEL GOMEZ NUNO,</b>	)	
<b>OSCAR RODRIGUEZ GOMEZ,</b>	)	
<b>and TEODULO HUIZAR MADERA,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>V.</b>	)	
	)	
<b>VANDERBILT LANDSCAPING LLC,</b>	)	
<b>LARRY VANDERBILT SR., JOFFREY</b>	)	
<b>VANDERBILT, ONESOURCE</b>	)	
<b>LANDSCAPE AND GOLF SERVICES,</b>	)	
<b>INC., ABM SERVICES INC., and ABM</b>	)	
<b>INDUSTRIES, INCORPORATED,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

---

**DEFENDANTS' ANSWER TO FIRST AMENDED COMPLAINT**

Defendants Onesource Landscape and Golf Services, Inc., ABM Services, Inc., and ABM Industries, Incorporated, (collectively “the ABM Defendants”) file

this Answer pursuant to Fed. R. Civ. P. 15(a)(1)(A), and respond to the allegations of Plaintiffs' First Amended Complaint as follows:

The ABM Defendants answer the individually enumerated Paragraphs of Plaintiffs' First Amended Complaint as follows:

**NATURE OF THE CLAIM**

1.

The ABM Defendants deny the allegations contained in Paragraph 1 of the First Amended Complaint.

2.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 2 of the First Amended Complaint, and therefore deny same.

3.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 3 of the First Amended Complaint, and therefore deny same.

4.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 4 of the First Amended Complaint, and therefore deny same.

5.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 5 of the First Amended Complaint, and therefore deny same.

6.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 6 of the First Amended Complaint, and therefore deny same.

7.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 7 of the First Amended Complaint, and therefore deny same.

8.

The ABM Defendants admit that Plaintiffs purport to assert certain claims, but deny such claims have any merit and deny that Plaintiffs are entitled to any of the relief they seek.

9.

The ABM Defendants admit that Plaintiffs purport to assert certain claims, but deny such claims have any merit and deny that Plaintiffs are entitled to any of the relief they seek.

## **JURISDICTION**

10.

Paragraph 10 is a legal conclusion to which no response is required. Notwithstanding, the ABM defendants generally admit that this Court currently has subject matter jurisdiction as a result of the Plaintiffs asserting claims under certain federal statutes. The ABM Defendants admit that Plaintiffs purport to assert certain claims under those statutes, but deny such claims have any merit and deny that Plaintiffs are entitled to any of the relief they seek.

11.

Paragraph 11 is a legal conclusion to which no response is required. Notwithstanding, the ABM defendants generally admit that this Court currently has subject matter jurisdiction over Plaintiffs' state law claims as a result of the Plaintiffs asserting other claims under certain federal statutes, but is without sufficient knowledge or information to admit or deny that the Court will retain such jurisdiction. The ABM Defendants admit that Plaintiffs purport to such claims, but deny such claims have any merit and deny that Plaintiffs are entitled to any of the relief they seek.

## **VENUE**

12.

Paragraph 12 is a legal conclusion to which no response is required. To the extent a response is required, the ABM Defendants are without sufficient information or knowledge to admit or deny paragraph 12 of the First Amended Complaint, and therefore deny same.

## **PARTIES**

13.

The ABM Defendants deny the allegations contained in Paragraph 13 of the First Amended Complaint.

14.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 14 of the First Amended Complaint, and therefore deny same.

15.

The ABM Defendants admit that Onesource Landscape and Golf Services, Inc. employed the individuals identified as the “2009 Plaintiffs” at some point during calendar year 2009. Except as expressly admitted or otherwise stated herein, the ABM Defendants deny the allegations contained in paragraph 15 of the First Amended Complaint.

16.

The ABM Defendants deny the allegations contained in Paragraph 16 of the First Amended Complaint.

17.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 17 of the First Amended Complaint, and therefore deny same.

18.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 18 of the First Amended Complaint, and therefore deny same.

19.

Paragraph 19 is a legal conclusion to which no response is required. To the extent a response is required, the ABM Defendants deny the allegations contained in Paragraph 19 of the First Amended Complaint.

20.

The ABM Defendants admit the allegations contained in Paragraph 20 of the First Amended Complaint, on information and belief.

21.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 21 of the First Amended Complaint, and therefore deny same.

22.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 22 of the First Amended Complaint, and therefore deny same.

23.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 23 of the First Amended Complaint, and therefore deny same.

24.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 24 of the First Amended Complaint, and therefore deny same.

25.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 25 of the First Amended Complaint, and therefore deny same.

26.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 26 of the First Amended Complaint, and therefore deny same.

27.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 27 of the First Amended Complaint, and therefore deny same.

28.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 28 of the First Amended Complaint, and therefore deny same.

29.

Paragraph 29 of the First Amended Complaint is not a factual assertion and no response is required. To the extent a response is necessary, the ABM Defendants deny the allegations contained in Paragraph 29 of the First Amended Complaint.



30.

The ABM Defendants admit that Onesource Landscape & Golf Services, Inc. is a Delaware corporation. The ABM Defendants are without sufficient information or knowledge to admit or deny what Plaintiff believes to be “at all relevant times for this action” and therefore deny that allegation.

31.

The ABM Defendants admit that Onesource Landscape & Golf Services, Inc. was registered to do business in the State of Tennessee from April 1999 until February 23, 2011. The ABM Defendants are without sufficient information or knowledge to admit or deny what Plaintiff believes to be “at all relevant times for this action” and therefore deny that allegation. Except as expressly admitted or otherwise stated herein, the ABM Defendants deny the allegations contained in paragraph 31 of the First Amended Complaint.

32.

The ABM Defendants admit that ABM Services, Inc. is a corporation organized under the laws of the state of Delaware and that as of December 28, 2010 is the legal name of the entity formerly known as Onesource Landscape and Golf Services, Inc. Except as expressly admitted or otherwise stated herein, the

ABM Defendants deny the allegations contained in Paragraph 32 of the First Amended Complaint.

33.

The ABM Defendants admit that ABM Services, Inc. is a wholly owned subsidiary of ABM Janitorial Services, Inc., which is a wholly owned subsidiary of ABM Industries, Incorporated. Except as expressly admitted or otherwise stated herein, the ABM Defendants deny the allegations contained in Paragraph 33 of the First Amended Complaint.

34.

Paragraph 34 of the First Amended Complaint is not a factual assertion and no response is required. To the extent a response is necessary, the ABM Defendants deny the allegations contained in Paragraph 34 of the First Amended Complaint.

35.

The ABM Defendants deny the allegations contained in Paragraph 35 of the First Amended Complaint.

36.

The ABM Defendants deny the allegations contained in Paragraph 36 of the First Amended Complaint.

37.

The ABM Defendants deny the allegations contained in Paragraph 37 of the First Amended Complaint.

38.

The ABM Defendants admit that during calendar year 2009, Larry Vanderbilt, Sr. held the title of Vice President and was employed by Onesource Landscape and Golf Services, Inc. Except as expressly admitted or otherwise stated herein, the ABM Defendants deny the allegations contained in Paragraph 38 of the First Amended Complaint.

39.

The ABM Defendants admit that in 2009, some or all of the individuals Plaintiffs have identified as the “2009 Plaintiffs”, received paychecks from both Onesource Landscape and Golf Services, Inc. and ABM Janitorial and Landscape Services, Inc. Except as expressly admitted or otherwise stated herein, the ABM Defendants deny the allegations contained in Paragraph 39 of the First Amended Complaint.

## **LEGAL FRAMEWORK**

40.

Paragraph 40 is a legal conclusion to which no response is required, and the ABM Defendants deny Plaintiff's attempt to construe any statute or regulation. To the extent a further response is required, the ABM Defendants deny the allegations contained in Paragraph 40 of the First Amended Complaint.

41.

Paragraph 41 is a legal conclusion to which no response is required, and the ABM Defendants deny Plaintiff's attempt to construe any statute or regulation. To the extent a further response is required, the ABM Defendants deny the allegations contained in Paragraph 41 of the First Amended Complaint.

42.

Paragraph 42 is a legal conclusion to which no response is required, and the ABM Defendants deny Plaintiff's attempt to construe any statute or regulation. To the extent a further response is required, the ABM Defendants deny the allegations contained in Paragraph 42 of the First Amended Complaint.

43.

Paragraph 43 is a legal conclusion to which no response is required, and the ABM Defendants deny Plaintiff's attempt to construe any statute or regulation. To the extent a further response is required, the ABM Defendants deny the allegations contained in Paragraph 43 of the First Amended Complaint.

44.

Paragraph 44 is a legal conclusion to which no response is required, and the ABM Defendants deny Plaintiff's attempt to construe any statute or regulation. To the extent a further response is required, the ABM Defendants deny the allegations contained in Paragraph 44 of the First Amended Complaint.

45.

Paragraph 45 is a legal conclusion to which no response is required, and the ABM Defendants deny Plaintiff's attempt to construe any statute or regulation. To the extent a further response is required, the ABM Defendants deny the allegations contained in Paragraph 45 of the First Amended Complaint.

46.

Paragraph 46 is a legal conclusion to which no response is required, and the ABM Defendants deny Plaintiff's attempt to construe any statute or regulation. To the extent a further response is required, the ABM Defendants deny the allegations contained in Paragraph 46 of the First Amended Complaint.

47.

Paragraph 47 is a legal conclusion to which no response is required, and the ABM Defendants deny Plaintiff's attempt to construe any statute or regulation. To the extent a further response is required, the ABM Defendants deny the allegations contained in Paragraph 47 of the First Amended Complaint.

48.

Paragraph 48 is a legal conclusion to which no response is required, and the ABM Defendants deny Plaintiff's attempt to construe any statute or regulation. To the extent a further response is required, the ABM Defendants deny the allegations contained in Paragraph 48 of the First Amended Complaint.

49.

Paragraph 49 is a legal conclusion to which no response is required, and the ABM Defendants deny Plaintiff's attempt to construe any statute or regulation. To the extent a further response is required, the ABM Defendants deny the allegations contained in Paragraph 49 of the First Amended Complaint.

## **FACTUAL ALLEGATIONS**

### **2010 Season**

50.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 50 of the First Amended Complaint, and therefore deny same.

51.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 51 of the First Amended Complaint, and therefore deny same.

52.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 52 of the First Amended Complaint, and therefore deny same.

53.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 53 of the First Amended Complaint, and therefore deny same.

54.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 54 of the First Amended Complaint, and therefore deny same.

55.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 55 of the First Amended Complaint, and therefore deny same.

56.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 56 of the First Amended Complaint, and therefore deny same.

57.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 57 of the First Amended Complaint, and therefore deny same.



58.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 58 of the First Amended Complaint, and therefore deny same.

59.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 59 of the First Amended Complaint, and therefore deny same.

60.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 60 of the First Amended Complaint, and therefore deny same.

61.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 61 of the First Amended Complaint, and therefore deny same.

62.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 62 of the First Amended Complaint, and therefore deny same.

63.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 63 of the First Amended Complaint, and therefore deny same.

64.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 64 of the First Amended Complaint, and therefore deny same.

65.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 65 of the First Amended Complaint, and therefore deny same.

66.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 66 of the First Amended Complaint, and therefore deny same.

67.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 67 of the First Amended Complaint, and therefore deny same.

68.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 68 of the First Amended Complaint, and therefore deny same.

69.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 69 of the First Amended Complaint, and therefore deny same.

70.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 70 of the First Amended Complaint, and therefore deny same.

71.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 71 of the First Amended Complaint, and therefore deny same.

72.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 72 of the First Amended Complaint, and therefore deny same.

73.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 73 of the First Amended Complaint, and therefore deny same.

74.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 74 of the First Amended Complaint, and therefore deny same.

75.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 75 of the First Amended Complaint, and therefore deny same.

76.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 76 of the First Amended Complaint, and therefore deny same.

77.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 77 of the First Amended Complaint, and therefore deny same.

78.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 78 of the First Amended Complaint, and therefore deny same.

79.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 79 of the First Amended Complaint, and therefore deny same.

80.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 80 of the First Amended Complaint, and therefore deny same.

81.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 81 of the First Amended Complaint, and therefore deny same.

82.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 82 of the First Amended Complaint, and therefore deny same.

83.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 83 of the First Amended Complaint, and therefore deny same.

84.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 84 of the First Amended Complaint, and therefore deny same.

85.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 85 of the First Amended Complaint, and therefore deny same.

86.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 86 of the First Amended Complaint, and therefore deny same.

87.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 87 of the First Amended Complaint, and therefore deny same.

88.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 88 of the First Amended Complaint, and therefore deny same.

89.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 89 of the First Amended Complaint, and therefore deny same.

90.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 90 of the First Amended Complaint, and therefore deny same.

91.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 91 of the First Amended Complaint, and therefore deny same.

92.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 92 of the First Amended Complaint, and therefore deny same.

93.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 93 of the First Amended Complaint, and therefore deny same.

94.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 94 of the First Amended Complaint, and therefore deny same.

95.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 95 of the First Amended Complaint, and therefore deny same.

96.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 96 of the First Amended Complaint, and therefore deny same.

97.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 97 of the First Amended Complaint, and therefore deny same.



98.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 98 of the First Amended Complaint, and therefore deny same.

99.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 99 of the First Amended Complaint, and therefore deny same.

100.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 100 of the First Amended Complaint, and therefore deny same.

101.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 101 of the First Amended Complaint, and therefore deny same.

102.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 102 of the First Amended Complaint, and therefore deny same.

103.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 103 of the First Amended Complaint, and therefore deny same.

104.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 104 of the First Amended Complaint, and therefore deny same.

105.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 105 of the First Amended Complaint, and therefore deny same.

106.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 106 of the First Amended Complaint, and therefore deny same.

107.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 107 of the First Amended Complaint, and therefore deny same.

108.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 108 of the First Amended Complaint, and therefore deny same.

109.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 109 of the First Amended Complaint, and therefore deny same.

110.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 110 of the First Amended Complaint, and therefore deny same.

**2009 Season**

111.

The ABM Defendants deny the allegations contained in Paragraph 111 of the First Amended Complaint.

112.

The ABM Defendants deny the allegations contained in Paragraph 112 the First Amended Complaint.

113.

The ABM Defendants deny the allegations contained in Paragraph 113 of the First Amended Complaint.

114.

The ABM Defendants deny the allegations contained in Paragraph 114 of the First Amended Complaint.

115.

The ABM Defendants deny the allegations contained in Paragraph 115 of the First Amended Complaint.

116.

The ABM Defendants deny the allegations contained in Paragraph 116 of the First Amended Complaint.

117.

The ABM Defendants deny the allegations contained in Paragraph 117 of the First Amended Complaint.

118.

The ABM Defendants deny the allegations contained in Paragraph 118 of the First Amended Complaint.

119.

The ABM Defendants deny the allegations contained in Paragraph 119 of the First Amended Complaint.

120.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 120 of the First Amended Complaint, and therefore deny same.

121.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 121 of the First Amended Complaint, and to the extent any such contracts exist, they would speak for themselves. Except as expressly admitted or otherwise stated herein, the ABM Defendants deny the allegations contained in Paragraph 121 of the First Amended Complaint.

122.

The ABM Defendants deny the allegations contained in Paragraph 122 of the First Amended Complaint.

123.

The ABM Defendants deny the allegations contained in Paragraph 123 of the First Amended Complaint.

124.

The ABM Defendants deny the allegations contained in Paragraph 124 of the First Amended Complaint.

125.

The ABM Defendants deny the allegations contained in Paragraph 125 of the First Amended Complaint.

126.

The ABM Defendants deny the allegations contained in Paragraph 126 of the First Amended Complaint.

127.

The ABM Defendants deny the allegations contained in Paragraph 127 of the First Amended Complaint.

128.

The ABM Defendants deny the allegations contained in Paragraph 128 of the First Amended Complaint.

129.

The ABM Defendants deny the allegations contained in Paragraph 129 of the First Amended Complaint.

130.

The ABM Defendants deny the allegations contained in Paragraph 130 of the First Amended Complaint.

131.

The ABM Defendants deny the allegations contained in Paragraph 131 of the First Amended Complaint.

132.

The ABM Defendants deny the allegations contained in Paragraph 132 of the First Amended Complaint.

133.

The ABM Defendants deny the allegations contained in Paragraph 133 of the First Amended Complaint.

134.

The ABM Defendants deny the allegations contained in Paragraph 134 of the First Amended Complaint.

135.

The ABM Defendants deny the allegations contained in Paragraph 135 of the First Amended Complaint.

136.

The ABM Defendants deny the allegations contained in Paragraph 136 of the First Amended Complaint.

137.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 137 of the First Amended Complaint, and therefore deny same.



138.

The ABM Defendants deny the allegations contained in Paragraph 138 of the First Amended Complaint.

139.

The ABM Defendants deny the allegations contained in Paragraph 139 of the First Amended Complaint.

140.

The ABM Defendants deny the allegations contained in Paragraph 140 of the First Amended Complaint.

**ALLEGED FIRST CLAIM FOR RELIEF**

141.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

142.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

143.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

144.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

145.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

146.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

147.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

148.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

149.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

150.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

151.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

152.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

**ALLEGED SECOND CLAIM FOR RELIEF**

153.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

154.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

155.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph

156.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

**ALLEGED THIRD CLAIM FOR RELIEF**

157.

The ABM Defendants deny the allegations contained in Paragraph 157 of the First Amended Complaint.

158.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

159.

The ABM Defendants are without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 159 of the First Amended Complaint, and therefore deny same.

160.

The ABM Defendants deny the allegations contained in Paragraph 160 of the First Amended Complaint.

161.

The ABM Defendants deny the allegations contained in Paragraph 161 of the First Amended Complaint.

162.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

163.

The ABM Defendants deny the allegations contained in Paragraph 163 of the First Amended Complaint.

164.

The ABM Defendants deny the allegations contained in Paragraph 164 of the First Amended Complaint.

**ALLEGED FOURTH CLAIM FOR RELIEF**

165.

The ABM Defendants deny the allegations contained in Paragraph 165 of the First Amended Complaint.

166.

The ABM Defendants deny the allegations contained in Paragraph 166 of the First Amended Complaint.

167.

The ABM Defendants deny the allegations contained in Paragraph 167 of the First Amended Complaint.

168.

The ABM Defendants deny the allegations contained in Paragraph 168 of the First Amended Complaint.

169.

The ABM Defendants deny the allegations contained in Paragraph 169 of the First Amended Complaint.

170.

The ABM Defendants deny the allegations contained in Paragraph 170 of the First Amended Complaint.

171.

The ABM Defendants deny the allegations contained in Paragraph 171 of the First Amended Complaint.

**ALLEGED FIFTH CLAIM FOR RELIEF**

172.

The ABM Defendants deny the allegations contained in Paragraph 172 of the First Amended Complaint.

173.

The ABM Defendants deny the allegations contained in Paragraph 173 of the First Amended Complaint.

174.

The ABM Defendants deny the allegations contained in Paragraph 174 of the First Amended Complaint.

175.

The ABM Defendants deny the allegations contained in Paragraph 175 of the First Amended Complaint.



176.

The ABM Defendants deny the allegations contained in Paragraph 176 of the First Amended Complaint.

**ALLEGED SIXTH CLAIM FOR RELIEF**

177.

The ABM Defendants admit that Plaintiffs purport to assert certain claims, but deny those claims have any merit or that Plaintiffs are entitled to any of the relief they seek.

178.

The ABM Defendants admit that Plaintiffs purport to assert certain claims, but denies those claims have merit or that Plaintiffs are entitled to any of the relief they seek.

179.

The ABM Defendants deny the allegations contained in Paragraph 179 of the First Amended Complaint.

180.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

181.

The ABM Defendants deny the allegations contained in Paragraph 181 of the First Amended Complaint.

182.

The ABM Defendants deny the allegations contained in Paragraph 182 of the First Amended Complaint.

183.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

184.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

185.

The ABM Defendants deny the insinuation that any of its employees was “subjected” to any “room and board arrangements” and further deny the allegations contained in Paragraph 185 of the First Amended Complaint.

186.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

187.

The ABM Defendants deny the allegations contained in Paragraph 187 of the First Amended Complaint.

188.

The ABM Defendants deny the allegations contained in Paragraph 188 of the First Amended Complaint.

189.

The ABM Defendants admit Plaintiffs purport to seek certain relief, but denies that any such relief is appropriate or that Plaintiffs are entitled to any of the relief they seek.

**ALLEGED SEVENTH CLAIM FOR RELIEF**

190.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

191.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

192.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

193.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

### **ALLEGED EIGHTH CLAIM FOR RELIEF**

194.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

195.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

196.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

197.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

198.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

**ALLEGED NINTH CLAIM FOR RELIEF**

199.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

200.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

201.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

202.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

203.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

204.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

205.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

**ALLEGED TENTH CLAIM FOR RELIEF**

206.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

207.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

208.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

209.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.



210.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

**ALLEGED ELEVENTH CLAIM FOR RELIEF**

211.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

212.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

213.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

This claim is not made against the ABM Defendants, and therefore no response is required. To the extent a response is necessary, the ABM Defendants deny all allegations contained in this paragraph.

The ABM Defendants deny each and every allegation contained in the First Amended Complaint not expressly admitted above. In addition, without assuming the burden of proof as to any defense and without waiver of any defense that is not required to be expressly pled, the ABM Defendants assert the following defenses to Plaintiffs' First Amended Complaint:

#### **FIRST DEFENSE**

Plaintiffs have failed to state a claim for which relief may be granted as to some or all of their claims.

#### **SECOND DEFENSE**

All actions taken by the ABM Defendants with regard to Plaintiffs were taken for legitimate and lawful reasons.

#### **THIRD DEFENSE**

All actions taken by the ABM Defendants with regard to Plaintiffs were taken in good faith, and the ABM Defendants have not engaged in any willful violation of any federal, state, or local law, rule or regulation.

#### **FOURTH DEFENSE**

Some or all of Plaintiffs' claims are barred by applicable federal and state statutes of limitations.

#### **FIFTH DEFENSE**

Some or all of the Plaintiffs' claims are barred by the doctrines of accord and satisfaction.

#### **SIXTH DEFENSE**

Some or all of the Plaintiffs' claims are barred by the doctrines of failure of conditions precedent and waiver.

#### **SEVENTH DEFENSE**

Some or all of the claims in the First Amended Complaint and the relief sought are barred by the equitable doctrines of waiver, estoppel, or unclean hands.

#### **EIGHTH DEFENSE**

Without assuming the burden of proof, Plaintiffs' claims do not rise out of an injury that was proximately caused by any policy or procedure of the ABM Defendants.

### **NINTH DEFENSE**

Some or all of the time for which Plaintiffs seek compensation is *de minimus*.

### **TENTH DEFENSE**

Some or all of the alleged time for which Plaintiffs seek compensation is irregular as well as practically and administratively difficult to record.

### **ELEVENTH DEFENSE**

The FLSA preempts some or all of Plaintiffs' breach of contract, fraud, and/or other claims asserted against the ABM Defendants.

### **TWELFTH DEFENSE**

To the extent that Plaintiffs suffered any legally cognizable damages as a result of the allegations set forth in their First Amended Complaint, any recovery should be reduced to the extent Plaintiffs have failed to mitigate, minimize, or avoid those damages.

### **THIRTEENTH DEFENSE**

To the extent that Plaintiffs suffered any legally cognizable damages as a result of the allegations set forth in their First Amended Complaint, any recovery should be reduced to the extent Plaintiffs caused or contributed to the cause of such alleged injuries or damages.

#### **FOURTEENTH DEFENSE**

The ABM Defendants are not liable for the actions of the other defendants in this action.

#### **FIFTEENTH DEFENSE**

All personnel actions about which Plaintiffs complain were taken solely for legitimate, non-discriminatory business reasons and were in no way motivated by or based on unlawful retaliatory or discriminatory animus.

#### **SIXTEENTH DEFENSE**

Plaintiffs did not engage in any protected activity.

#### **SEVENTEENTH DEFENSE**

To the extent Plaintiffs were engaged in protected activity, such activity was unknown and unforeseeable to the ABM Defendants, and such protected activity had no bearing on any decisions made by ABM Defendants.

#### **EIGHTEENTH DEFENSE**

Some or all of Plaintiffs' claims are barred in whole or in part by the exemptions, exclusions, exceptions, and/or credits provided in Section 7 of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 207.

### **NINETEENTH DEFENSE**

Some or all of Plaintiffs' claim are barred in whole or in part by the provisions of the Portal-to-Portal Act, 29 U.S.C. § 260, because any acts or omissions by Defendants or others giving rise to this action were taken in good faith and with reasonable grounds for believing that the actions or omissions were not a violation of the FLSA.

### **TWENTIETH DEFENSE**

Some or all of Plaintiffs' claim are barred in whole or in part by the provisions of the Portal-to-Portal Act, 29 U.S.C. § 254, as to all hours during which Plaintiffs were engaged in activities which were preliminary or postliminary to Plaintiffs' principal activities.

### **TWENTY-FIRST DEFENSE**

The ABM Defendants acted at all times with good faith to comply with the FLSA and had reasonable grounds to believe that its actions did not violate the statutes cited in the First Amended Complaint, and the ABM Defendants assert a lack of willfulness or intent to violate the FLSA as a defense.

### **TWENTY-SECOND DEFENSE**

Some or all of Plaintiffs' claims are moot, in part, because of investigations by various governmental entities that discovered that many, if not all, of Plaintiffs' claims were false and baseless.

### **TWENTY-THIRD DEFENSE**

Plaintiffs' claims based upon fraud and/or misrepresentation are barred, because Plaintiffs' First Amended Complaint fails to state with particularity the circumstances constituting the alleged fraud or misrepresentation required by Fed. R. Civ. P. 9(b).

### **TWENTY-FOURTH DEFENSE**

To the extent that Plaintiffs are found to have been employed pursuant to a contract, Plaintiffs committed the first material breach of any such contract.

### **TWENTY-FIFTH DEFENSE**

The ABM Defendants did not breach any term of any contract entered into with Plaintiffs.

### **TWENTY-SIXTH DEFENSE**

Plaintiffs' claims are barred by the statute of frauds.

### **TWENTY-SEVENTH DEFENSE**

The ABM Defendants did not engage in, participate in, or act in furtherance of any a conspiracy to deprive any person or persons, including Plaintiffs, of the equal protection of the laws, or of equal privileges and immunities under the law.

### **TWENTY-EIGHTH DEFENSE**

To the extent that Plaintiffs seek punitive damages based upon federal law, Plaintiffs are barred from recovering such damages because the ABM Defendants have not engaged in any unlawful practice, act, or omission, let alone with malice or reckless indifference to Plaintiffs' federally protected rights.

### **TWENTY-NINTH DEFENSE**

To the extent that Plaintiffs seek punitive damages based upon Tennessee law, those claims are barred and no recovery by Plaintiffs should occur, because the ABM Defendants have not acted intentionally, fraudulently, maliciously, or recklessly as required.

### **THIRTIETH DEFENSE**

The ABM Defendants have not provided or obtained the labor from Plaintiffs through use of means of force, threats of force, physical restraint, or threats of physical restraint to that Plaintiffs or persons, serious harm or threats of such harm to such persons, or abuse or threatened abuse of the law or legal process.



### **THIRTY-FIRST DEFENSE**

Plaintiffs have failed to exhaust the administrative remedies available to them.

### **THIRTY-SECOND DEFENSE**

The ABM Defendants have made no misrepresentations to Plaintiffs, and as a result, Plaintiffs cannot be said to have relied upon any misrepresentations.

### **THIRTY-THIRD DEFENSE**

The ABM Defendants reserve the right to assert additional affirmative and/or other defenses as this matter continues and the discovery process reveals such defenses.

**WHEREFORE**, the ABM Defendants pray the Court as follows:

- A. That the Plaintiffs have and recover nothing from the ABM Defendants and that the Plaintiffs' First Amended Complaint be dismissed with prejudice;
- B. The costs of this action be taxed against the Plaintiffs;
- C. That the Court grant the ABM Defendants their attorney's fees and costs pursuant to the Civil Rights Attorney's Fees Award Act of 1976, 42 U.S.C. § 1988, Fed R. Civ. P. 11; and the Court's inherent powers; and
- D. That the Court grant the ABM Defendants such other and further relief as it deems appropriate.

This 5<sup>th</sup> day of May, 2011.

**HAWKINS, PARNELL, THACKSTON  
& YOUNG, LLP**

/s/ Matthew A. Boyd

---

Ronald G. Polly, Jr.

Georgia Bar No. 538264

[rpolly@hptylaw.com](mailto:rpolly@hptylaw.com)

(to be admitted *pro hac vice*)

Matthew A. Boyd

Tennessee Bar No. 17898

Georgia Bar No. 027645

[mboyd@hptylaw.com](mailto:mboyd@hptylaw.com)

4000 SunTrust Plaza  
303 Peachtree Street, N.E.  
Atlanta, Georgia 30308  
Telephone: (404) 614-7400  
Facsimile: (404) 614-7500

*Counsel for the ABM  
Defendants*

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

<b>HILARIO RAZURA JIMENEZ, JOSE</b>	)	
<b>MANUEL GUERRERO GOMEZ,</b>	)	
<b>J. REFUGIO CASTELLON LUNA,</b>	)	
<b>GUILLERMO BERNAL ORTEGA,</b>	)	
<b>RIGOBERTO TORRES GUERRERO,</b>	)	
<b>DIEGO FLORES CICERNOS,</b>	)	<b>Civil Action No. 3:11-0276</b>
<b>RUBEN MADERA CANALES, LUIS A.</b>	)	
<b>ALBERTO MEDINA AYON, ALVARO</b>	)	
<b>MORALES VILLEGAS, MELCHOR</b>	)	
<b>JAVIER CASTANEDA GALLARDO,</b>	)	
<b>JOSE CASIMIRO BENAVIDES</b>	)	
<b>FRIAS, EDGARDO IBARRA RUIZ,</b>	)	<b>ANSWER TO FIRST</b>
<b>HUGO IGNACIO IBARRA RUIZ,</b>	)	<b>AMENDED COMPLAINT</b>
<b>MIGUEL ANGEL GOMEZ NUNO,</b>	)	
<b>OSCAR RODRIGUEZ GOMEZ,</b>	)	
<b>and TEODULO HUIZAR MADERA,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>V.</b>	)	
	)	
<b>VANDERBILT LANDSCAPING LLC,</b>	)	
<b>LARRY VANDERBILT SR., JOFFREY</b>	)	
<b>VANDERBILT, ONESOURCE</b>	)	
<b>LANDSCAPE AND GOLF SERVICES,</b>	)	
<b>INC., ABM SERVICES INC, and ABM</b>	)	
<b>INDUSTRIES, INCORPORATED,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

---

**CERTIFICATE OF SERVICE**

This is to hereby certify that I have this day electronically filed

**DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST AMENDED**

**COMPLAINT** with the Clerk of the Court using the CM/ECF system which will automatically send email notification of such filing to the following attorneys of record:

Charles P. Yezbak, III  
Yezbak Law Offices  
2002 Richard Jones Road, Suite B-200  
Nashville, Tennessee 37215  
Yezbak@yezbaklaw.com

Jennifer J. Rosenbaum  
New Orleans Workers' Center For Racial Justice  
217 N. Prieur Street  
New Orleans, LA 70112  
jjrosenbaum@nowcrj.org

Edward Tuddenham  
1339 Kalmia Rd. NW  
Washington DC 20012  
etudden@io.com

Mekesha H. Montgomery  
Brian C. Neal  
Frost Brown Todd  
424 Church Street  
Suite 1600  
Nashville, TN 38219-2308  
mmontgomery@fbtlaw.com  
bneal@fbtlaw.com

This 5<sup>th</sup> day of May, 2011.

/s/ MATTHEW A. BOYD

---

Matthew A. Boyd  
Tennessee Bar No. 017898  
[mboyd@hptylaw.com](mailto:mboyd@hptylaw.com)